



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Parts 201, 202

[Docket No. 2016-9]

Supplementary Registration

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Copyright Office is proposing to amend the regulation governing supplementary registration to reflect certain technical upgrades that will soon be made to the electronic registration system. In most cases applicants will be required to submit an online application in order to correct or amplify the information set forth in a basic registration. This will increase the efficiency of the supplementary registration process for both applicants and the Office alike. In addition, the Office is amending the regulation to codify and update certain practices that are set forth in the *Compendium of U.S. Copyright Office Practices, Third Edition* and to improve the readability of the regulation.

DATES: Comments on the proposed rule must be made in writing and must be received in the U.S. Copyright Office no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: For reasons of government efficiency, the Copyright Office is using the regulations.gov system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through regulations.gov. Specific instructions for submitting comments are available on the

Copyright Office website at <http://copyright.gov/rulemaking/supplementary-registration/>.

If electronic submission of comments is not feasible due to lack of access to a computer and/or the Internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate

Register and Director of Registration Policy and Practice, by telephone at (202) 707-8040; or Erik Bertin, Deputy Director of Registration Policy and Practice, by telephone at 202-707-8040.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND.

Section 408(d) of the Copyright Act authorizes the Register of Copyrights (the “Register”) to establish “formal procedures for the filing of an application for supplementary registration.” 17 U.S.C. 408(d). A supplementary registration is a special type of registration that may be used “to correct an error in a copyright registration or to amplify the information given in a registration.” *Id.* Specifically, it identifies an error or omission in an existing registration (referred to herein as a “basic registration”) and places the corrected information or additional information in the public record.

When the U.S. Copyright Office (the “Office”) issues a supplementary registration, it does not cancel or replace the basic registration or the registration number for that registration. Likewise, the Office does not change the information set forth in the basic registration or the public record for that registration. Instead, as specified by statute, the basic registration and the supplementary registration coexist with each other in the public record, and “the information contained in a supplementary registration augments

but does not supersede that contained in the earlier registration.” *Id.*

II. THE PROPOSED RULE

A. Application for Supplementary Registration

1. Online Registration

The Office is proposing to amend the regulation that governs the procedure for seeking a supplementary registration (the “Proposed Rule”). Under the Proposed Rule, in most cases, applicants will be required to file an online application in order to correct or amplify the information set forth in a basic registration.

The Office has allowed and encouraged applicants to register their works through the electronic registration system since 2007. *See* 72 FR 36883 (July 6, 2007). When the Office introduced this system, it could be used only to seek a basic registration. To seek a supplementary registration, applicants had to submit a paper application using Form CA. 37 CFR 201.5(c)(1), (c)(2). In February 2015 the Office completed a comprehensive analysis of its electronic registration system with input from technical experts and stakeholders. This analysis will support the Office’s long-term goals of creating both a better interface and a better public record. *See* U.S. COPYRIGHT OFFICE, OFFICE OF THE CHIEF INFORMATION OFFICER, REPORT AND RECOMMENDATIONS OF THE TECHNICAL UPGRADES SPECIAL PROJECT TEAM (Feb. 2015), *available at* http://copyright.gov/docs/technical_upgrades/usco-technicalupgrades.pdf; *see also* 78 FR 17722 (Mar. 22, 2013). In December 2015 the Register issued a strategic plan that sets forth the Office’s performance objectives for the next five years. The plan provides a roadmap for re-envisioning almost all of the services that the Office provides, including how applicants register claims, submit deposits, record documents, share data, and access

expert resources. With respect to information technology, the plan calls for “a robust and flexible technology enterprise that is dedicated to the current and future needs of a modern copyright agency.” U.S. COPYRIGHT OFFICE, STRATEGIC PLAN 2016-2020: POSITIONING THE UNITED STATES COPYRIGHT OFFICE FOR THE FUTURE, at 35 (Dec. 1, 2015), *available at* <http://www.copyright.gov/reports/strategic-plan/sp2016-2020.html>. At the direction of Congress,¹ the Office has also developed a detailed IT plan, and obtained public comments on specific strategies, costs, and timelines for technology objectives. U.S. COPYRIGHT OFFICE, PROVISIONAL INFORMATION TECHNOLOGY MODERNIZATION PLAN AND COST ANALYSIS (Feb. 29, 2016), *available at* <http://copyright.gov/reports/itplan/>.

In the meantime, the Office has made some enhancements to the current system that will improve the versatility of the supplementary registration process. Under the Proposed Rule, applicants will be required to use the online registration system to file a supplementary registration for any types of works that are capable of being registered through the electronic system. This online filing requirement will thus apply to supplementary registrations for literary works (*e.g.*, fiction, nonfiction, poetry, etc.), single issues of a serial publication (*e.g.*, periodicals, magazines, newsletters, journals, etc.), works of the visual arts (*e.g.*, photographs, maps, technical drawings, etc.), works of the performing arts (*e.g.*, musical works, dramatic works, choreographic works, pantomimes, motion pictures and other audiovisual works, etc.), and sound recordings. *See* 37 CFR 202.3(b). The online filing requirement will also extend to supplementary registrations for collective works, works registered under the unit of publication option,

¹ H.R. REP. NO. 114-110, at 16-17 (2015).

and works registered as an unpublished collection. *See* 37 CFR 202.3(b)(4). It will also apply to supplementary registrations for groups of serials,² newspapers, or newsletters,³ groups of published photographs,⁴ or groups of updates and revisions to a photographic database.⁵ In the near future, the online filing requirement will apply to supplementary registrations for groups of unpublished photographs,⁶ and groups of contributions to periodicals.⁷ If the Office subsequently decides to move registrations for other classes of works into the electronic system, supplementary registrations for those works will also be

² *See* 37 CFR 202.3(b)(6)(v).

³ Although the current regulations state that an application for a group of newspaper or newsletter issues must be submitted with a paper application, the Office is able to process these types of claims through the electronic registration system, and has in fact been doing so since December 14, 2012. *See* 37 CFR 202.3(b)(7)(i)(B), (9)(viii). The Office intends to amend the regulations in a future rulemaking to reflect these recent upgrades.

⁴ In 2012 the Office issued an interim regulation that established a pilot program for applicants that register large numbers of photographs using the group option for published photographs (referred to herein as “GRPPH”) and the group option for photographic databases. 76 FR 4072, 4074, 4075 (Jan. 24, 2011). Applicants that participate in the pilot program may submit their photographs through the electronic system, provided that they obtain prior authorization from the Visual Arts Division and follow the instructions from that Division concerning the information that should be included in the application. 37 CFR 202.3(b)(10)(xi). While the pilot program was well-intentioned, it has been extremely burdensome for both applicants and the Office. Therefore, the Office is issuing a separate notice of proposed rulemaking (published elsewhere in this volume of the **Federal Register**, and referred to herein as the “Photo Rulemaking”) that will modify the regulation that governs GRPPH. Among other changes, the rule proposed in the Photo Rulemaking will require applicants to submit an online application specifically designed for GRPPH claims, instead of submitting their photographs through the pilot program. (By contrast, the pilot program for photographic databases will remain in effect – at least for the time being.)

⁵ Applicants may register a photographic database through the electronic system by participating in the pilot program mentioned in footnote 4. 76 FR at 4074, 4075; 37 CFR 202.3(b)(5)(ii)(A).

⁶ The rule proposed in the Photo Rulemaking will establish a new group registration option for unpublished photographs (referred to herein as “GRUPH”). In order to use this option, applicants will be required to submit an online application specifically designed for GRUPH claims, instead of submitting a paper application.

⁷ The Office is issuing a separate notice of proposed rulemaking (published elsewhere in this volume of the **Federal Register**, and referred to herein as the “GRCP Rulemaking”) on a proposed rule that will modify the group option for contributions to periodicals (“GRCP”). Among other changes, the rule proposed in the GRCP Rulemaking will require applicants to submit an online application specifically designed for GRCP claims, instead of submitting a paper application.

subject to this same requirement. In short, use of the online supplementary registration application will be required for most works. Moreover, applicants will generally be required to use the online registration system to file a supplementary registration even if the work was originally registered using a paper application.⁸ Instructions for completing the online application will be provided in the electronic system and in Chapter 1800 of the *Compendium of U.S. Copyright Office Practices, Third Edition* (hereinafter “*Compendium*”).⁹

Once the Proposed Rule goes into effect, applicants will not be allowed to submit a paper application on Form CA to correct or amplify the basic registration for any types of works that are capable of being registered through the electronic system. If the Office receives such a paper application, it will ask the applicant to resubmit the claim using the online application.

To correct or amplify the registration record for works that cannot be registered through the electronic system, applicants will be required to submit a paper application

⁸ As discussed above in footnote 4, the rule proposed in the Photo Rulemaking will modify the requirements for registering a group of published photographs. Among other things, applicants will be allowed to submit no more than 750 photographs with each application. The limit on the number of photographs, in turn, will affect the procedure for correcting or amplifying an existing registration for a group of published photographs. If the basic registration covers 750 photographs or less, the applicant will be able to correct or amplify the registration record with a single supplementary registration. By contrast, multiple supplementary registrations may be needed in cases where the basic registration had been issued before the issuance of a final rule in the Photo Rulemaking and where the basic registration covers more than 750 photographs.

⁹ Under the Proposed Rule, applicants will be required to obtain prior authorization and instructions from the Visual Arts Division if they intend to correct or amplify the information set forth in a basic registration for a photographic database. This is due to the fact that a supplementary registration for a photographic database will be processed under the pilot program mentioned in footnote 4. The Visual Arts Division will continue to monitor claims submitted under this program to ensure that applicants complete the online application in an appropriate manner.

using Form CA.¹⁰ This includes group registrations issued under 37 CFR 202.3(b)(5) for a database that does not consist predominantly of photographs,¹¹ and GATT registrations issued under 37 CFR 202.12 for a foreign work restored to copyright protection under the Uruguay Round Agreements Act.¹² It also includes a renewal registration for a work registered or first published before January 1, 1978.¹³ While instructions for completing Form CA are provided with Form CA and in section 1802.8 of the *Compendium*, the specific requirements for the paper application will no longer be listed in the regulation itself.

2. Policy Considerations Supporting Online-only Registration.

A substantial majority of the U.S. population has access to the internet,¹⁴ and the Office expects that most copyright owners will be able to use the electronic registration system.¹⁵ However, the Office recognizes that millions of Americans do not have broadband service, and that the Proposed Rule may impose a burden on copyright owners

¹⁰ A supplementary registration cannot be used to correct or amplify the registration record for a vessel design or a mask work. The Office has no authority and no procedure for correcting substantive errors in these types of registrations. See 17 U.S.C. 1319; see also 71 FR 46402 (Aug. 14, 2006). However, if the applicant made a clerical or typographical error in an application for a vessel design, the owner of the registered design or its duly authorized agent may be able to correct the error by submitting an application for a certificate of correction using Form DC. See 37 CFR 212.8(a)(3), (c)(2).

¹¹ Currently, applicants must submit these types of claims using a paper application “that best reflects the subject matter of the material in the database.” 37 CFR 202.3(b)(5)(ii)(A).

¹² Currently, applicants must submit these types of claims using a paper application submitted on Form GATT. 37 CFR 202.12(c)(2).

¹³ Currently, applicants must submit these types of claims using a paper application submitted on Form RE. 37 CFR 202.17(g)(1).

¹⁴ The Pew Research Center found that 84% of adults use the internet, including 85% of the people in urban and suburban communities and 78% of the people in rural communities. PEW RESEARCH CENTER, AMERICANS’ INTERNET ACCESS: 2000-2015 (June 26, 2015), available at <http://www.pewinternet.org/2015/06/26/americans-internet-access-2000-2015/c>.

¹⁵ Approximately 94% of the claims filed in fiscal year 2015 were submitted through the electronic system, while 6% of the claims were submitted with a paper application.

who fall within this segment of the population.¹⁶ Nevertheless, the Office believes that the benefits of phasing-out the paper application and replacing it with an online application outweigh the potential burden on copyright owners who do not have direct access to the internet.

Paper applications are extremely burdensome for both applicants and the Office. Describing an error or omission in a basic registration can be tedious and time consuming, especially when the applicant needs to make a significant number of changes to the registration record. The Office routinely receives applications that are hundreds of pages long, such as when a stock photography company wants to add thousands of titles to the record for a photographic database. Examining these applications imposes tremendous burdens on the Office, because each correction or amplification must be copied from Form CA and entered into the record by hand. In some cases, registration specialists have spent several days on a single application. This increasing demand on the Office's limited resources causes delays in issuing supplementary registrations, and it prevents specialists from examining other types of claims thereby increasing the overall backlog within the Office.

If a copyright owner does not have broadband at home, at the home of a relative, friend, or neighbor, or at his place of employment, there are other options for submitting an application for supplementary registration. If the copyright owner has a tablet or

¹⁶ The Federal Communications Commission ("FCC") reported that 17% of the population does not have access to a broadband service with connection speeds of twenty-five megabits per second ("mbps") for downloads and three mbps for uploads. This figure includes 8% of the people who live in urban areas, 53% of the people in rural areas, and 63% of the people in U.S. territories and Tribal lands. FEDERAL COMMUNICATIONS COMMISSION, 2015 BROADBAND PROGRESS REPORT at 4 (Jan. 29, 2015), *available at* <https://www.fcc.gov/reports/2015-broadband-progress-report>.

laptop, he could complete and submit the online application at a coffee shop, a bookstore, or any other place where wi-fi or cellular service is available.¹⁷ He also could log onto the electronic registration system by going to a public library that provides computers with internet access.

In the alternative, the copyright owner could hire an attorney to submit the application on his behalf, either by paying for the attorney's services or by obtaining *pro bono* representation.¹⁸ The Office also notes that a number of companies will prepare and submit an application for a fee. These companies typically provide this service for copyright owners seeking a basic registration, but they could conceivably expand their offering to include supplementary registrations.

For the foregoing reasons, the Office believes that requiring applicants to use the online application is a reasonable trade-off for improving the overall efficiency of the supplementary registration process. The Office invites comment on this proposal, including whether the Office should eliminate the paper application for seeking a

¹⁷ When filing an application for a supplementary registration there is no need to upload a copy of the work that is covered by the basic registration. Thus, applicants will be able to submit these types of claims with a tablet or other wi-fi enabled device. In some cases, the registration specialist may need to compare the information provided in the application for supplementary registration with the copy of the work that was submitted with the application for the basic registration. For instance, this may be necessary if the supplementary registration changes the publication status of the work or adds additional authors to the registration record. If the Office does not have a copy of the work in its possession, the registration specialist may ask the applicant to submit a replacement copy. *See Compendium* section 1802.9(C). But in all cases, the replacement copy could be sent by first class mail, courier, or hand delivery; the copy does not need to be uploaded to the electronic system (though this would be an option if the applicant has broadband service).

¹⁸ The Office does not require applications to be prepared or submitted by an attorney. In certain special cases the Office may suggest that the copyright owner consider seeking legal advice, but the Office does not furnish the names of copyright attorneys, publishers, agents, or other similar information. *See* 37 CFR 201.2(a)(2).

supplementary registration, phase out this option after a specified period of time, or continue to offer this option for applicants who prefer to use the paper-based system.

B. Fees.

Under the Proposed Rule, the applicant will be required to pay the same filing fee, regardless of whether the application is submitted through the electronic registration system or on Form CA. In addition, the applicant may be required to pay a fee to locate and obtain a copy of the basic registration that is referenced in the application. Each of these fees is discussed below.

1. Filing Fee.

In 2012 the Office conducted a study pursuant to section 708 of the Copyright Act, which authorizes the Register to establish, adjust, and recover fees for certain services that the Office provides to the public. After reviewing its costs, the Office decided to increase the filing fee for a supplementary registration from \$100 to \$130.¹⁹ The Office explained that paper applications “are considerably less efficient than electronic registration” and that the prior fee did not offset a sufficient percentage of the costs associated with these types of claims. U.S. COPYRIGHT OFFICE, PROPOSED SCHEDULE AND ANALYSIS OF COPYRIGHT FEES TO GO INTO EFFECT ON OR ABOUT APRIL 1, 2014, at 18 (Nov. 14, 2013), *available at* <http://www.copyright.gov/docs/newfees/USCOFeeStudy-Nov13.pdf>. For example, in Fiscal Year 2011 the filing fee for a supplementary application was \$100, but the actual cost of processing these claims was \$184 per application. *Id.* Appendix B.

Section 708(b) authorizes the Register to adjust the fees that the Office charges

¹⁹ This increase went into effect on May 1, 2014.

for certain services (including the fee for seeking a supplementary registration), but before doing so the Register must conduct a study of the costs incurred by the Office for registering claims, recording documents, and providing other services. In conducting this study, the Register must consider the timing of any fee adjustments and the Office's authority to use the fees consistent with its budget. 17 U.S.C. 708(b)(1). Section 708(b) provides that the Register may adjust these fees no "more than necessary to cover the reasonable costs incurred by the Copyright Office for . . . [such services], plus a reasonable inflation adjustment to account for any estimated increase in costs." 17 U.S.C. 708(b)(2). It also provides that the Office must submit a proposed fee schedule to Congress and that the Office may implement the schedule 120 days thereafter (unless Congress enacts a law stating that it does not approve the schedule). 17 U.S.C. 708(b)(5).

Once the Proposed Rule has been implemented, the Office will monitor the cost of processing supplementary claims to determine if future fee adjustments may be warranted or if the Office should charge a different fee for claims submitted through the electronic registration system and claims submitted on Form CA. The Office will use this information in conducting its next fee study.

2. Fee for Additional Certificate of Registration.

When the Office receives an application for a supplementary registration, the registration specialist will compare the information set forth in the application with the information set forth in the basic registration. If the Office has made a digital copy of the certificate of registration, the specialist may be able to conduct his or her review without

obtaining a physical copy of the certificate.²⁰ If the certificate has not been digitized, the specialist will ask the applicant to submit a copy of the certificate. If the applicant is unable to do so, the Office will charge an additional fee to make a copy of the basic registration in order to conduct the requisite review.²¹

C. Examination Practices.

The Proposed Rule also updates examination practices in several areas, including, among other things, to reflect changes to the *Compendium of Copyright Office Practices*, to update rules regarding when supplementary registration will be declined, and to update practices regarding cross-references in the Office's public record.

Changes to Reflect Compendium. The *Compendium* is the manual of the Register of Copyrights setting forth and explaining key administrative duties of the Copyright Office under title 17 of the United States Code. It serves as both a technical manual for the Office's staff, as well as a guidebook for authors, copyright licensees, practitioners, scholars, the courts, and members of the general public. In 2014 the Office released a comprehensive revision of the *Compendium* that makes the Office's practices more accessible and transparent to the public, and sets the stage for a number of long-term improvements in registration and recordation policy. *See* 79 FR 78911 (Dec. 31, 2014).

The Proposed Rule updates a number of practices that are reflected in the *Compendium*.²² It clarifies that the Office may issue a supplementary registration to

²⁰ The Office has digitized the certificates of registration for claims registered between 1994 and the present. Certificates issued before that year may be stored in electronic form, on microfilm, in bound volumes, or in other physical formats.

²¹ The current fee for obtaining an additional copy of a certificate of registration is \$40 (<http://copyright.gov/docs/fees.html>).

²² Corresponding changes will be made to the *Compendium* when the Proposed Rule goes into effect.

correct an error in a basic registration issued on or after January 1, 1978, or a renewal registration for a work that was registered or first published on or before December 31, 1977. *See Compendium* section 1802.3.

Updating Rules for When Supplementary Registration Will Be Denied. The Proposed Rule also clarifies that the Office may decline to issue a supplementary registration for a basic registration that covered the first twenty-eight years of the copyright term, because any registration issued before January 1, 1978 has expired by now.²³ *See id.* section 1802.4. Allowing interested parties to correct or amplify the information in a registration after the initial term expired creates a potential for error, mistake, or even fraud. This could have significant consequences in a legal dispute, given that a certificate of registration may create an evidentiary presumption concerning the facts stated in the certificate.²⁴ 17 U.S.C. 410(c). Therefore, the Proposed Rule explains that the Office may issue a supplementary registration for a basic registration that covered the first twenty-eight years of the copyright term only in exceptional circumstances, if the proposed correction or amplification is supported by clear, convincing, and objective documentation. In this respect, the Proposed Rule tracks a similar provision in the current regulation that specifies when the Office may issue a

²³ Registrations issued under the 1909 Act expired at the end of the first twenty-eight years of the copyright term. If the copyright was renewed, the renewal registration expired at the end of the renewal term.

²⁴ For similar reasons, the Proposed Rule clarifies that the Copyright Office will not issue a supplementary registration for a registration that has been cancelled. Cancellation is an administrative procedure for invalidating a registration that has been issued by the Office. The Office has the authority to cancel a registration if “the material deposited does not constitute copyrightable subject matter” or if “the claim is invalid for any other reason.” 17 U.S.C. 410(b). It also has the authority to cancel a registration if the registration was made in error or if it was issued in the wrong class or series. *See generally* 37 CFR 201.7.

supplementary registration for a basic renewal registration.²⁵

Cross-references to Basic Registration. Under the current regulations, when the Office issues a supplementary registration, it will cross-reference the records for the supplementary registration and the basic registration only if the application for supplementary registration was submitted by or on behalf of the copyright claimant named in the basic registration.²⁶ See 37 CFR 201.5(b)(1) n.1. If the application was submitted by or on behalf of any other party, the records will not be cross-referenced with each other. See *Compendium* section 1802.1.

After further consideration, the Office has concluded that these cross-references should be included regardless of who has submitted the application for supplementary registration. This amendment will improve the accuracy and usefulness of the public record by making it easier to find supplementary registrations that may contain additional information pertaining to the basic registration (regardless of who submitted the application for supplementary registration). If an interested party wishes to identify the person who made the correction or amplification, that information can be obtained by reviewing the records for the supplementary registration.²⁷

²⁵ 37 CFR 201.5(b)(2)(iv). In addition, the Proposed Rule removes a sentence from this provision which states that the Office may correct an error in a renewal registration if the Office received an application for supplementary registration in the last year of the first twenty-eight years of the copyright term. This sentence is no longer needed now that the deadline for submitting such claims has passed.

²⁶ Specifically, the Office will place a note in the record for the basic registration that identifies the registration number and the effective date of registration for the supplementary registration, and it will place a corresponding note in the record for the supplementary registration that identifies the registration number and the year of registration for the basic registration. See *Compendium* section 1802.1.

²⁷ The Proposed Rule retains the requirement that an application for a supplementary registration must be submitted by an author of the work, a claimant of the work, an owner of any of the exclusive rights in the work, or a duly authorized agent of any of the foregoing parties. 37 CFR 201.5(b)(1).

Clarifying Relationship Between Basic and Supplementary Registration. An additional change is being made to clarify the nature of a supplementary registration. As a general rule, the Office will issue only one registration for each work – meaning that the Office will issue one basic registration for a particular work, but will not issue additional basic registrations once the first basic registration has been made. *See Compendium* section 510. There are several exceptions to this rule, which are set forth in 37 CFR 202.3(b)(11)(i)-(iv).

One of the exceptions relates to supplementary registrations, stating that “[s]upplementary registrations may be made . . . to correct or amplify the information in a registration made under this section.”²⁸ This erroneously suggests, however, that supplementary registrations are treated as basic registrations. The Proposed Rule will accordingly remove this exception; because a supplementary registration is not considered a basic registration, there is no limit on the number of supplementary registrations that may be issued for a particular basic registration, and in any event, the Office does not view supplementary registration as an exception to the general rule against issuing one basic registration per work.

Certification that Applicant Has Reviewed Basic Registration. It has come to the Office’s attention that applicants often submit an application for supplementary registration without reviewing the information that is set forth in the basic registration. In some cases, applicants review the records that are posted in the Office’s online database, but those records do not contain all the information that is set forth in the certificate of registration for a particular work. This may create a discrepancy between the registration

²⁸ 37 CFR 202.3(b)(11)(iv).

record and the changes proposed in the application for supplementary registration. This complicates the examination of the claim, which, in turn, delays the issuance of the supplementary registration.

The Proposed Rule addresses this issue by requiring applicants to sign a certification stating that they reviewed the certificate of registration for the basic registration before submitting the application for supplementary registration.²⁹ If the applicant does not have a copy of the certificate, he or she may obtain a copy from the Record Research and Certification Section by following the procedure set forth in section 2408 of the *Compendium*. If it appears that the applicant did not review the basic registration before seeking a supplementary registration, the Office may ask the applicant to resubmit the application or may refuse registration.

Referral Procedure for Office Error. Finally, the Proposed Rule clarifies that if an error in a basic registration was caused by the Office’s own action, it will correct that error on its own initiative through an internal procedure known as a “referral.” In such cases, there is no need to seek a supplementary registration, and there is no fee for referral. *See Compendium* section 1804. It also clarifies that the referral procedure does not apply if the error was caused by the applicant’s action – even if the examiner should have recognized that error when he or she examined the claim. In such cases, the Office will correct the error only if the applicant submits an application for a supplementary registration together with the appropriate filing fee.

D. Technical Amendments.

²⁹ If the applicant fails to sign the certification in the online application, the application will not be accepted by the electronic registration system. If the applicant fails to sign the certification on Form CA, the registration specialist will communicate with the applicant.

The Proposed Rule will improve the readability of the regulation by reorganizing or revising awkward provisions, and by adopting the appropriate format for providing cross-references within the Code of Federal Regulations (as recommended by the *Federal Register Document Drafting Handbook*).³⁰ In all cases, these technical amendments are intended to clarify the existing regulation, but they do not represent a substantive change in policy.

III. CONCLUSION

The Proposed Rule will increase the efficiency of the supplementary registration process and create a more robust record of the claim. The Office invites public comment on these proposed changes.

List of Subjects in 37 CFR Part 201

Copyright, General Provisions.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR parts 201 and 202 as follows:

PART 201—GENERAL PROVISIONS

1. Revise the authority citation for part 201 to read as follows:

Authority: 17 U.S.C. 702.

2. Amend § 201.3 by revising paragraph (c)(9) to read as follows:

§ 201.3 Fees for registration, recordation, and related services, special services, and services performed by the Licensing Division.

³⁰ The regulation repeatedly states that title 17 of the United States Code was “amended by Pub. L. 94-553.” The Office recently issued a notice of proposed rulemaking that would remove this phrase. See 81 FR 67940, 67944 (Oct. 3, 2016).

* * * *

(c) * *

(9) Registration of a correction or amplification to a claim:	
(i) Supplementary registration: electronic filing or paper filing	130
(ii) Correction of a design registration (Form DC)	100

* * * *

3. Revise § 201.5 to read as follows:

§ 201.5 Supplementary registration.

(a) *General.* This section prescribes conditions relating to the filing of an application for supplementary registration under section 408(d) of title 17 of the United States Code to correct an error in a copyright registration or to amplify the information given in a registration. No correction or amplification of the information in a basic registration will be made except pursuant to the provisions of this section. As an exception, where it is discovered that a basic registration contains an error caused by the Copyright Office's own action, the Office will take appropriate measures to rectify its mistake.

(b) *Definitions.* (1) A *basic registration* means any of the following:

(i) A copyright registration made under sections 408, 409, and 410 of title 17 of the United States Code;

(ii) A renewal registration made under section 304 of title 17 of the United States Code;

or

(iii) A copyright registration or a renewal registration made under title 17 of the United States Code as it existed before January 1, 1978.

(2) A *supplementary registration* means a registration issued under section 408(d) of title 17 of the United States Code and the provisions of this section.

(c) *Persons entitled to file an application for supplementary registration.* Supplementary registration can be made only if a basic copyright registration for the same work has already been completed. After a basic registration has been completed, any author or other copyright claimant of the work, or the owner of any exclusive right in the work, or the duly authorized agent of any such author, other claimant, or owner, who wishes to correct or amplify the information given in the basic registration for the work may file an application for supplementary registration.

(d) *Basis for issuing a supplementary registration.* (1) Supplementary registration may be made either to correct or to amplify the information in a basic registration.

(2) A *correction* is appropriate if information in the basic registration was incorrect at the time that basic registration was made.

(3) An *amplification* is appropriate:

(i) To supplement or clarify the information that was required by the application for the basic registration and should have been provided, such as the identity of a co-author or co-claimant, but was omitted at the time the basic registration was made; or

(ii) To reflect changes in facts, other than those relating to transfer, license, or ownership of rights in the work, that occurred since the basic registration was made.

(4) Supplementary registration is not appropriate:

(i) To reflect a change in ownership that occurred on or after the effective date of the basic registration or to reflect the division, allocation, licensing or transfer of rights in a work;

(ii) To correct errors in statements or notices on the copies of phonorecords of a work, or to reflect changes in the content of a work; or

(iii) To correct or amplify the information set forth in a basic registration that has been cancelled under § 201.7.

(5) If an error or omission in a basic renewal registration is extremely minor, and does not involve the identity of the renewal claimant or the legal basis of the claim, supplementary registration may be made at any time. In an exceptional case, however, supplementary registration may be made to correct the name of the renewal claimant and the legal basis of the claim if clear, convincing, and objective documentation is submitted to the Copyright Office which proves that an inadvertent error was made in failing to designate the correct living statutory renewal claimant in the basic renewal registration.

(6) In general, the Copyright Office will not issue a supplementary registration for a basic registration made under title 17 of the United States Code as it existed before January 1, 1978. In an exceptional case, the Copyright Office may issue a supplementary registration for such a registration, if the correction or amplification is supported by clear, convincing, and objective documentation.

(e) *Application for supplementary registration.* (1) To seek a supplementary registration for a work registered in Class TX, PA, VA, SR, or SE, an unpublished collection or a unit of publication registered under § 202.3(b)(4)(i) of this chapter, or a group of related works registered under § 202.3(b)(6) through (10) or § 202.4 of this chapter, an applicant must complete and submit the online application designated for supplementary registration.

(2) To seek a supplementary registration for a database that consists predominantly of

photographs registered under § 202.3(b)(5) of this chapter, an applicant must complete and submit the online application designated for supplementary registration after consultation with and under the direction of the Visual Arts Division.

(3) To seek a supplementary registration for a restored work registered under § 202.12 of this chapter, a database that does not consist predominantly of photographs registered under § 202.3(b)(5) of this chapter, or a renewal registration, an applicant must complete and submit a paper application using Form CA.

(4) Before submitting the application, the applicant must sign a certification stating that the applicant reviewed a copy of the certificate of registration for the basic registration that will be corrected or amplified by the supplementary registration. To obtain a copy of the certificate, the applicant may submit a written request to the Records Research and Certification Section using the procedure set forth in Chapter 2400 of the *Compendium of U.S. Copyright Office Practices, Third Edition*.

(5) The appropriate filing fee, as required by § 201.3(c), must be included with the application or charged to an active deposit account. At the Office's discretion, the applicant may be required to pay an additional fee to make a copy of the certificate of registration for the basic registration that will be corrected or amplified by the supplementary registration.

(6) Copies, phonorecords, or supporting documents cannot be made part of the record for a supplementary registration and should not be submitted with the application.

(f) *Effect of supplementary registration.* (1) When the Copyright Office completes a supplementary registration, it will issue a certificate of supplementary registration bearing a new registration number in the appropriate class. The Office will cross-

reference the records for the basic registration and the supplementary registration by placing a note in each record that identifies the registration number and effective date of registration for the related registration.

(2) As provided in section 408(d) of title 17 of the United States Code, the information contained in a supplementary registration augments but does not supersede that contained in the basic registration. The basic registration will not be expunged or cancelled.

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

4. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

§ 202.3 Registration of copyright.

5. Amend § 202.3 as follows:

- a. In paragraph (b)(11)(iii), remove the phrase “by that applicant; and” and add in its place “by that applicant.”
- b. Remove paragraph (b)(11)(iv).

Dated: November 22, 2016.

Sarang V. Damle
*General Counsel and
Associate Register of Copyrights*

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